Supreme Court, U.S.
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No. 93-87

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

MCI TELECOMMUNICATIONS CORPORATION,
Petitioner,

v.

DANELLA CONSTRUCTION CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONER'S REPLY BRIEF

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August 27, 1993

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PETITIONER'S REPLY BRIEF

In its Brief in Opposition, Respondent Danella Construction Corporation ("Respondent") simply confirms that the Third Circuit Court of Appeals substituted state for federal law:

> ". . . [The] federal law and policy was fully implemented in the instant case by virtue of the parties having jointly referred their entire controversy to arbitration pursuant to the express terms of their contract. The federal policy against frustration of arbitration agreements having been satisfied, Danella was thereupon free to employ procedures available

> either under federal law by way of the FAA or appropriate state and common law . . ."

Opposition at p. 4.

Respondent is forced to adopt this awkward position because the Court of Appeals itself adopted state law to vacate the original arbitration Award. In defending the opinion below, Respondent relies on two cases, neither of which supports its novel argument. Respondent first cites *Volt Information Sciences v. Board of Trustees,* 489 U.S. 468 (1989). That case holds that where the parties have agreed that a state's laws will govern their contract, the Federal Arbitration Act does not preempt that choice in favor of federal law. *Id.* at 479. *Volt* does not permit a federal court to choose state or federal law in a case decided under the federal act.

Respondent also relies on *Martin v. Youngstown Sheet & Tube Co.,* 911 F.2d 1239 (7th Cir. 1990), a case arising under Section 301 of the Labor Management Relations Act. The *Martin* case is correctly cited for the proposition that contracting parties are "free to structure their arbitration agreements as they see fit." 911 F.2d at 1243 n.8, *quoting Volt, supra.* Reliance on *Martin* is completely misplaced in this case because the issue is not whether to honor a choice of law clause, but whether to honor the Federal Arbitration Act.

Both parties, the district court, and the Court of Appeals recognized the applicability of the Federal Arbitration Act. Only the Court of Appeals failed to follow the commands of the Act. It is telling that Respondent cites no case that would permit any federal court to choose which portions of the Act it will follow.

The reason that Respondent cites no authority in support of the Court of Appeals' analysis is that the analysis turns the Supremacy Clause of the United States Constitution on its head. In the Act, Congress provided a

rule of decision for state and federal courts.[1] The plain provisions of the statute have been upheld by this Court on numerous occasions. *Perry v. Thomas,* 482 U.S. 483 (1987); *Southland Corp. v. Keating,* 465 U.S. 1 (1984); *Moses H. Cone Memorial Hosp. v. Mercury Constr. Co.,* 460 U.S. 1 (1983); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395 (1967). Moreover, in the *Prima Paint* case, this Court specifically rejected the argument advanced by Respondent—that the federal court is not bound to apply the Act in a diversity case. *Prima Paint, supra,* 388 U.S. at 404-05.

The Court of Appeals' adoption of a state law standard for vacating an award, and its complete disregard of the federal statute of limitations, is described in the Petition. In the Opposition, Respondent merely characterizes this case as "unimportant" and totally disregards the issue of the statute of limitations. To the contrary, this case is important and worthy of this Court's review, as underscored by the Opposition:

> 1. The Court of Appeals studiously avoided application of the federal statute of limitations, for which no defense is offered by Respondent;
>
> 2. The Court of Appeals nullified the parties' contractual commitment to "final and binding" arbitration, in disregard of numerous decisions of this Court and plain statutory commands;

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[1] If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made . . .

9 U.S.C. Section 9 (1954).

3. The Court of Appeals reached through the numerous federal legal standards that stood in the way of a particular result, and vacated an arbitration Award never shown by any competent evidence to be improper.

Petitioner is aware that this Court does not grant petitions for certiorari merely to correct error. Petitioner submits that this case provides an appropriate opportunity for this Court to resolve a conflict in the Circuits,[2] to remind the lower courts of their duty to implement federal statutory law,[3] and to answer a fundamental federal question concerning the Federal Arbitration Act.[4]

Respectfully submitted,

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[2] *See* Petition at pp. 6-7, n.5.

[3] *See* Petition at pp. 9, 11.

[4] *See* Petition at pp. 9-11.